

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA

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NOTICE OF CORRECTION

From: Clerk's Office

Case Style: Parker v. Givens et al

Case Number: 2:06-cv-00649-WHA

Referenced Pleading: Notice of Removal - Doc. 1

This Notice of Correction was filed in the referenced case this date to correct the PDF documents attached to this notice. Please see the correct PDF documents to this notice.

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

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KEN and NAOMI SCHWIEKER,

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Plaintiffs,

v.

OLDCASTLE MATERIALS
SOUTHEAST, INC.,

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Defendant.

CASE NO: 3:06-cv-838-MEF

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

The Defendant, Oldcastle Materials Southeast, Inc., removes this case to the United States District Court for the Middle District of Alabama, Eastern Division, and as grounds therefore respectfully shows unto the Court the following:

1. Plaintiffs, Ken and Naomi Schwieker, are citizens of the State of Alabama.
2. Defendant Oldcastle Materials Southeast, Inc. is a corporation incorporated under the laws of the state of Delaware, with its principal place of business in Washington, D.C., and is, therefore, not a resident citizen of the state of Alabama.
4. Jurisdiction is based upon diversity of citizenship, pursuant to 28 U.S.C. Section 1332(a) and 28 U.S.C. Section 1441(a).
5. Plaintiffs have filed a lawsuit against the Defendant in the Circuit Court of Lee County, Alabama. A copy of the Complaint is attached hereto as Exhibit "A", and being made a part hereof.
6. Plaintiffs' Complaint makes claims for private nuisance, negligence and

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9/19/2006

wantonness, injunctive relief, and statutory damages for diversion of water. Plaintiffs seek both compensatory and punitive damages in an amount to be assessed by a jury. As noted by Plaintiffs in their Complaint, Plaintiffs were parties to a previous lawsuit against this Defendant and a previous owner and operator of the quarry, Hanson Aggregates, wherein Plaintiffs obtained a verdict against this Defendant for \$75,000.00, and a verdict against Hanson Aggregates in an amount which exceeded \$75,000.00. As noted, Plaintiffs also seek injunctive relief, asking the Court to order that operations at the quarry cease. If the Plaintiffs are awarded such damages and/or injunctive relief, the amount awarded will most certainly exceed \$75,000.00.

7. Thus, it is clear that the matter in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

8. There are no other defendants to this action besides this Defendant, and this Defendant is removing this case within the applicable time period, pursuant to the aforesaid statutes.

9. Upon the filing of this notice of removal, Defendant has given written notice thereof to the attorneys for the Plaintiffs and have filed a copy of the proceedings and notice with the Circuit Court Clerk of Lee County, Alabama, all in accordance with the law.

WHEREFORE, Defendant Oldcastle Materials Southeast, Inc. prays that the removal of said cause to the United States District Court for the Middle District of Alabama, Eastern Division, be effected and no further or other proceedings may be had with respect to this matter in the Circuit Court of Lee County, Alabama, pending a final decision and

determination of this controversy in the United States District Court.

Dated this 18th day of September, 2006.

ADAMS, UMBACH, DAVIDSON & WHITE, LLP



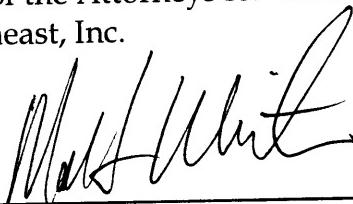
Phillip E. Adams

PHILLIP E. ADAMS, JR. (ASB-9946-D56P)
One of the Attorneys for Oldcastle Materials
Southeast, Inc.



Patrick C. Davidson

PATRICK C. DAVIDSON (ASB-4602-A43P)
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Matthew W. White

MATTHEW W. WHITE (ASB-6809-W83M)
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OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon:

James B. Sprayberry, Esq.
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P.O. Drawer 2429
Auburn, AL 36831-2429

Charles E. Vercelli, Jr., Esq.
VERCELLI & ASSOCIATES, P.C.
1019 S. Perry Street
Montgomery, AL 36104-5049

by placing a copy of the same in the United States mail, properly addressed and postage prepaid this the 18th day of September, 2006.



OF COUNSEL